Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-243

RICHMOND NEWSPAPERS, INC., ET AL.,

Appellants,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

(And Two Companion Cases)

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF VIRGINIA

JURISDICTIONAL STATEMENT FILED AUGUST 14, 1979
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Chronological List of Important Dates

March 16, 1976	Commonwealth of Virginia grand jury for Hanover County indicts John Paul Stevenson for murder of Lillian Emma Keller.
July 16, 1976	Defendant Stevenson convicted of second-degree murder of Lillian Emma Keller in Hanover County Circuit Court jury trial.
October 7, 1977	Virginia Supreme Court reverses defendant Stevenson's conviction and remands case to Hanover County Circuit Court.
May 30, 1978	First retrial of defendant Stevenson begins in Hanover County Circuit Court; mistrial declared.
June 6, 1978	Second retrial of defendant Stevenson begins in Hanover County Circuit Court; mistrial again declared.
September 11, 1978	Third retrial of defendant Stevenson begins in Hanover County Circuit Court. Shortly after case is called, Circuit Court by oral order grants defense motion to close entire trial to public and press; appellants Wheeler and McCarthy ejected from courtroom. In afternoon hearing, Circuit Court by oral order permits appellants Wheeler and McCarthy, and appel-

lant Richmond Newspapers, Inc., their employer, to intervene for purpose of arguing that trial should be opened to public and press; appellants Wheeler and McCarthy forbidden to attend hearing on their exclusion from defendant Stevenson's trial; Circuit Court by written order denies motion to vacate closure order.

September 12, 1978 — Hanover County Circuit Court proceeds with trial of defendant Stevenson in secrecy; excuses jury; takes under advisement motion of defense counsel that mistrial be declared; sustains defense motion to strike Commonwealth's evidence; finds defendant Stevenson not guilty—still in absence of jury, public, and press.

September 27, 1978 — Appellants file written petition in Hanover County Circuit Court to intervene *nunc pro tunc* in trial of defendant Stevenson; Circuit Court by written order *nunc pro tunc* grants petition to intervene.

Appellants file in Hanover County Circuit Court notice of appeal to Virginia Supreme Court.

November 8, 1978 — Appellants file in Virginia Supreme Court petitions for appeal from Hanover County Circuit Court's closure order and for writs of man-

damus and prohibition ensuring access to trial of defendant Stevenson and to all future criminal trials in Hanover County Circuit Court.

July 9, 1979 — Virginia Supreme Court enters judgments refusing appellants' petition for appeal and dismissing appellants' petitions for writs of mandamus and prohibition, citing *Gannett Co., Inc.* v. *DePasquale,* 99 S.Ct. 2898 (1979).

August 13, 1979 — Appellants file in Virginia Supreme Court and in Hanover County Circuit Court notice of appeal to United States Supreme Court.

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Defense Motion To Close Entire Trial To Public And Press, Including Circuit Court's Oral Order Excluding Public And Press From Defendant Stevenson's Trial, Dated September 11, 1978

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

COMMONWEALTH OF VIRGINIA,

—vs.—

JOHN PAUL STEVENSON

TRANSCRIPT of MOTION in the above when heard on *September 11, 1978,* before Honorable Richard H. C. Taylor, Judge.

APPEARANCES:

Patrick R. Bynum, Jr., Attorney at Law, Commonwealth's Attorney for Hanover County, Virginia;

C. Willard Norwood, Attorney at Law of NORWOOD & NORWOOD, 304 West Broad Street, Richmond, Virginia 23229, Counsel for the Defendant;

John Paul Stevenson, the Defendant, in person.

[2] Note: At the calling of the case at 10:00 o'clock a.m., the Court Reporter first being duly sworn, the matters are begun as follows, viz:

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Defense Motion To Close Entire Trial To Public And Press, Including Circuit Court's Oral Order Excluding Public And Press From Defendant Stevenson's Trial Dated September 11, 1978

The Court: Mrs. Wright, let the record show that Mr. Stevenson is present; his lawyer, Mr. Norwood, is present; and the Commonwealth's Attorney is present.

Mr. Stevenson has already been arraigned and pleaded not guilty, I believe, Mr. Norwood.

Mr. Norwood: Yes, Your Honor.

The Court: It's not necessary to go through that again, I don't think.

Mr. Norwood: No, sir.

The Court: Are there any preliminary motions before we bring in the jury?

Mr. Norwood: Uh, there was this woman that was with the family [3] of the deceased when we were here before. She, uh, had sat in the Courtroom. I would like to ask that everybody be excluded from the Courtroom because I don't want any information being shuffled back and forth when we have a recess as to what—who testified to what.

Also, I have no objection to the, uh, jury being just drawn in numerical order according to the list. It's not necessary to go by lot because we only have about twenty-four so we're going to get most of them.

The Court: We normally do it by lot. Are you specifically requesting the other way?

Mr. Norwood: It really doesn't make any difference.

The Court: I think that, uh, uh, whichever way ya'll—

Mr. Bynum: I prefer to do it by lot. I think the Clerk has already prepared to do it. You've only got four extra anyway so—

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Defense Motion To Close Entire Trial To Public And Press, Including Circuit Court's Oral Order Excluding Public And Press From Defendant Stevenson's Trial Dated September 11, 1978

[4] The Court: Yes. Do you have any objection to clearing the Courtroom, Mr. Bynum?

Mr. Bynum: Uh, no, sir, I'll leave it to the discretion of the Court. Are you talking about every—are you talking about everyone; the press included? Is that—does your motion extend to them?

Mr. Norwood: Yes, sir, that would be my motion.

The Court: All right, sir.

Mr. Bynum: It's in the discretion of the Court. You know, I—I understand, you know. It's strictly on defense motion.

The Court: Yes, sir, well, the statute gives me that power specifically—

Mr. Bynum: Yes, sir.

The Court: —and the defendant has made the motion and I'll rule that the Courtroom be kept clear of all parties except the witnesses [5] when they testify.

Mr. Norwood: Also, Your Honor, I would like to, uh, interrogate the jurors individually.

The Court: All right, you want individual voir dire?

Mr. Bynum: Do you want individual voir dire?

Mr. Norwood: Yes, sir.

The Court: Do you have any objection to that, sir?

Mr. Bynum: No, sir.

The Court: Okay, we'll do the voir dire individually.

[Certificate of Court Reporter Omitted In Printing]

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Appellants' Motion To Vacate Order Closing Entire Trial To Public And Press, Including Circuit Court's Unreported Oral Order Denying Appellants' Motion To Vacate Closure Order Of September 11, 1978

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

[Title Omitted In Printing]

TRANSCRIPT OF MOTION in the above when heard on *September 11, 1978,* before Honorable Richard H. C. Taylor, Judge.

[2] APPEARANCES:

Patrick R. Bynum, Jr., Attorney at Law, Commonwealth's Attorney for Hanover County, Virginia;

Alexander Wellford and William F. Etherington, Attorneys at Law of CHRISTIAN, BARTON, EPPS, BRENT & CHAPPELL, 1200 Mutual Building, Richmond, Virginia 23219, Counsel for Richmond Newspapers, Inc., Timothy B. Wheeler, and Kevin McCarthy;

C. Willard Norwood, Attorney at Law of NORWOOD & NORWOOD, 304 West Broad Street, Richmond, Virginia 23229, Counsel for the Defendant;

John Paul Stevenson, the Defendant, in person.

[3] Note: At the calling of the case at 4:55 o'clock p.m., the Court Reporter having previously duly sworn, the matters are begun as follows, viz:

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Appellants' Motion To Vacate Order Closing Entire Trial To Public And Press, Including Circuit Court's Unreported Oral Order Denying Appellants' Motion To Vacate Closure Order Of September 11, 1978

The Court: I think we have to treat this, Mr. Wellford, as a part of the original trial that we're in. I know this is going to, uh, increase your position in your motion, but I—the Court ruled that the Courtroom had to be cleared and I'm going to have to ask the reporters to leave at this time, too.

Mr. Wellford: All right, sir.

Note: Reporters Wheeler and McCarthy are now leaving the Courtroom.

Mr. Wellford: If I might tender the motion.

[4] The Court: Yes, sir.

Note: Motion is now being handed to the Court.

The Court: All right, since none of us have seen it, Mr., uh, Wellford, if you would, uh, make your motion for the record and go through your Memorandum so we can kind of fellow you. The lawyers may respond if they want to.

Mr. Wellford: The motion, Your Honor, is to open this trial to the press and the public. Now, I understand that this morning the Court ruled that the public and the press would be excluded. I understand that it was on the motion of the defendant. I do not know whether the Commonwealth took a position, uh, one way or the other, but I don't think that that is material.

We have appended to the [5] motion a bobtail Memorandum which cites some of the cases. Rather than to read the Memorandum to you, I'd like to make, uh, an argument based [on] the points that we are advancing.

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Appellants' Motion To Vacate Order Closing Entire Trial To Public And Press, Including Circuit Court's Unreported Oral Order Denying Appellants' Motion To Vacate Closure Order Of September 11, 1978

Now, the Supreme Court of the United States has said on a number of occasions that prior restraint on speech and publication is the most serious and least tolerated—least tolerable infringement on First Amendment rights. Now, that statement is from Nebraska Press Association against Stewart which was decided in 1975.

The Court continues: "Only the most exigent circumstances warrant the issuance of an Order curtailing the right of the press to publish. All other measures within the power of the Court to ensure a fair trial must be found to be unavailing or deficient." [6] Now, I'll read that again. "All other measures within the power of the Court to ensure a fair trial must be found to be unavailing or deficient."

Nebraska Press involved a gag order issued at the conclusion of a preliminary hearing. This order, of course, excludes the press from the, uh, proceeding itself and does not purport to prohibit the press from publishing, but the case that I'm looking at now is the one cited in the Memorandum, Gannett Company against DePasquale, which also dealt with the exclusion of the press from a hearing, albeit a preliminary hearing.

As to the question of equating exclusion of the press with a gag order, which is unquestionably a prior restraint, the Court said this: There was a second infirmity which overshadows the right of the public to open [7] judicial proceedings. The exclusionary order entered here infringed petitioner's First Amendment rights in that it constituted a violation of the right of the press to publish free from

unlawful govermanic [*sic*] interference. It is clear that a closed trial order restricts media access to information ordinarily made available to the general public. By denying access to the media a trial Judge can effectively prevent the publication of testimony or other information deemed prejudicial to the accused. It is this feature of the instance [*sic*] closed trial order that is attacked by petitioner as an infringement upon its First Amendment rights.

Logic compels the conclusion that where an exclusionary order is entered merely as a substitute for a gag order, which would otherwise place a direct [8] restraint on what the press can publish, such exclusionary order infringes upon protected First Amendment rights. An exclusionary order is merely a substitute for a direct prior restraint whereas here the sole purpose behind the order is to prevent the publication of what transpires in the Courtroom during a pretrial hearing.

The fact that such an order constitutes a novel form of censorship cannot insulate it or shield it from constitutional attack. In the area of indispensable First Amendment liberties the Supreme Court has been careful not to limit their protection to any particular way of abridging it—the citation there is Goschen against American Press Company; then it continues—since abridgement of such rights, even though unintended, may inevitably come from varied forms of governmental action.

[9] Where an exclusionary order is directed at the press to prevent the publication of material prejudicial to the

defendant, First Amendment rights are abridged to the same degree as in the case of a gag order directing the press not to publish the asserted prejudicial information.

Now, the case that I am referring to, Gannett against DePasquale, points out that it is not just the right of the defendant that is interested in the proceedings in a Court and it states: The accused in a criminal prosecution has a constitutional right to a public trial, but the public trial guarantee does not inure to the benefit of the accused alone. The public has a vital interest in open judicial proceedings, especially criminal proceedings, to ensure that the integrity of the judicial process remains intact. Public trials serve [10] to instill a sense of public trust in our judicial process by preventing the abuse or abuses of secret tribunals as exemplified by the inquisition, Star Chamber, and lettre de cachet.

The searchlight of a trial which is open to the public serves as a restraint against the abuse of judicial power. A trial is a public event. Which—what transpires in the Courtroom is public property.

Then it continues: Precisely because the public at large has a vital stake in the concept of a public trial, the circumstances under which a trial Court may order closure have been closely circumscribed. Closure is permitted only in unusual circumstances or upon a clear showing that such an order is required to prevent a serious and imminent threat to the integrity of the trial.

[11] In the Nebraska Press case the Court found, and this is the United States Supreme Court, found that a re-

viewing Court must examine the evidence before the trial Judge when the order was entered to determine the nature and extent of pretrial news coverage, whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity, how effectively a restraining order would operate to prevent the threatened danger. The reviewing Court should then consider whether the record supports the entry of a prior restraint on publication.

Now, that case, as I pointed out, entailed a gag order. In this case there has been no evidential finding so far as I know by the Court prior to the entry of this order. The public and the press have not been allowed to be heard. There has been no consideration [12] of other measures within the power of the Court to ensure a fair trial and I should add that there are cases which allude to sequestration of the jury or changes of venue as providing the appropriate alternative and superior alternatives than to prior restraints.

Now, for the foregoing reasons I submit to the Court that the trial should be open to the public.

Thank you.

The Court: Mr. Wellford, uh, the cases that you cited, uh,uh, and you gave me the benefit of some of them a few months ago when we had a question like this came—come up, uh, don't they all go to the point that the Court has to weigh, uh, in its own mind, uh, the different rights of the public or the rights of the defendant as against the rights

of the public or the rights of the defendant as against the [13] rights of the press?

Mr. Wellford: I think that is certainly a part of the evaluation, Your Honor. There's no question about the Sixth Amendment right of the defendant, but this particular action of the Court is the one infringement on the First Amendment that must be most severely tested, and Meer [*sic*] against Minnesota is the leading case in this area in which prior restraint was deemed to be bad.

I know of no case in which the Supreme Court of the United States has approved a closed trial. There are situations in which, uh, hearings are held on suppression motions and the Court actually entertained whether or not the rights of the defendant might be adversely affected and whether or not, uh, there is some remedy that can offset the adverse effect. But I believe that the law is before [14] the Court that to enter an order such as you have entered today, it must, in fact, entertain alternatives which might protect the defendant's rights.

Now, not heard—having heard the motion, I do not know the injury which the Court seeks to prevent by the entry of this order. If it is the possibility that the jury, uh, may read the newspaper tomorrow and read evidence which it would otherwise not be entitled to see or hear in Court, then I submit to you that the answer constitutionally is that the jury be sequestered and that when you balance the First Amendment right against the inconvenience of the

jury, constitutionally the First Amendment right overrides that inconvenience.

If the purported ill, the damage to the defendant's right, cannot be corrected in that fashion or in any other fashion, then the [15] Court's order arguably will stand, but I don't know of any case—not one case—before the United States Supreme Court in which a prior restraint has been upheld. The most startling case of all was the one involving the Pentagon papers in which they tried—the Pentagon and Justice Department tried to prevent publication by the New York Times of national secrets and the Supreme Court said you can't do it.

The Court: Thank you, sir.

Any of you other lawyers want to comment?

Mr. Norwood: Uh, if Your Honor please, I kind of agree. You have to look out—look at the situation or question of whether or not the right of the press supersedes all other rights and I don't believe that the framers of the Constitution and the ones who drafted [16] the Amendment intended that the First Amendment should supersede and take priority over all other rights in the rest of the Amendments to the Federal Constitution.

Uh, Your Honor knows, and Mr. Wellford is not aware of this fact, this is the fourth time that we've had, uh—attempted to have a trial since the beginning and it is the third time that we've had difficulty, uh, with information, uh, between the jurors, and on two previous occasions Your Honor declared a mistrial and that was the reason why I

wanted to avoid keep coming back up to the Court and keep having to try this case. I didn't want, uh, information to, uh, leak out and if the press writes something, you know that they don't always quote exactly verbatim what, uh, was said, unfortunately, and, uh, one of the reporters said well, can't you order the—the, uh, jurors [17] not to read the paper or not to look at television. Well, that's—you know, that's just like telling the jury to disregard that statement. There's no way that you can do it and I believe that the defendant's rights in this particular case and even in the case cited by Mr. Wellford in People versus Holder, it says in the next to the last paragraph on 9—Page 935: While there may be instances where a defendant's right to a fair trial may dictate the exclusion of the public, in the light of the decision of the Court of Appeals, this is not such a case. Now, I haven't read the facts, but I submit that in our case this is such a case due to the problems that we've previously had in reference to this case and due to the problems that this is a small community, it's not like in a big city where you've got three hundred thousand [18] people, and I submit that I don't believe that the public's rights or the right of the press supersedes the—the, uh, defendant's right to a fair and impartial trial. I think that that right supersedes all other rights; that the Court has to guarantee or has to take such precautionary measures to ensure that the defendant will receive a fair and impartial trial, which has always been the law of our land, and I just think that the public and the press ought to be excluded.

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Appellants' Motion To Vacate Order Closing Entire Trial To Public And Press, Including Circuit Court's Unreported Oral Order Denying Appellants' Motion To Vacate Closure Order Of September 11, 1978

The Court: Thank you, Mr. Norwood.

Before we hear from you, Mr. Bynum, I think that the record ought to show, uh, Mr. Norwood—I mean, Mr. Wellford, so that it will be in the record, uh, uh, Mr. Norwood, uh, made similar statements to that. Exactly what he said can be read if the record is ever typed up.

[19] This is the third time since it, uh, came back that we've tried to give Mr. Stevenson a trial, but one of the other points that, uh, uh, we take into consideration in this particular Courtroom is layout of the Courtroom. I think that, uh, having people in the Courtroom is distracting to the jury. Now, we have to have certain people in here and maybe that's not a very good reason. Uh, when we get into our new Court Building, uh, people can sit in the audience so that jury can't see them. Uh, the rule of the Court may be different under those circumstances, but I think that the —in order to make the record, uh, uh, some of the things that went through my mind.

I did not have a—a hearing to which, uh, you were invited, Mr. Wellford, uh, before I made the ruling. Uh, on the defendant's motion and a short [20] statement by him, and if I recall correctly, the Commonwealth didn't comment one way or the other. He may not want to comment now. Uh, I felt under the circumstances that, uh, my ruling was proper.

Mr. Bynum, do you want to comment on anything that I may have missed?

Mr. Bynum: No, sir, Your Honor.

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Appellants' Motion To Vacate Order Closing Entire Trial To Public And Press, Including Circuit Court's Unreported Oral Order Denying Appellants' Motion To Vacate Closure Order Of September 11, 1978

The Court: Uh, I think it would be very helpful, Mr. Wellford, if, uh, uh, Courts in my situation could have some guiding, uh, lights to go by. I'm inclined to agree with Mr. Norwood that, uh, if I feel that the—the, uh, rights of the defendant are infringed in any way then, uh, he makes the motion to do something and, uh, it doesn't completely override all rights of everyone else, then I'm inclined to go along with the defendant's motion.

[21] Now, I'll let you say something if you want to, but, uh, I'm just trying to make a record for you so you can do something with this if you want to.

Mr. Wellford: I have an order which I have drawn, Your Honor, denying my motion—

The Court: All right.

Mr. Wellford: —which I will tender to the Court.

The Court: Yes, sir.

Mr. Welford: Before handing it up, I would like to point out that I am not out of sympathy with what Mr. Norwood said. I view with absolute amazement trials such as the Manson trial in California where jurors are sequestered for months on end and view with amazement the fact that some of these defendants keep coming back. I think we just finished with, uh, Leslie Van Houten for the third time, but I would point out to the Court that the [22] public was there, and I've been practicising law for twenty years and what Mr. Norwood has said about the rights of the defendant has been true since before I undertook the practice of law and remains true. Certainly if the defendant does not want the public to know or information to be pub-

lished, then he can ask that the, uh, public be excluded but it very seldom is.

I can represent to the Court that the motion made by Mr. Norwood was made in Richmond within the past few weeks before Judge Wilkinson and was denied. I don't know whether the Court knows of any case in which the press has been excluded from a criminal trial or the public. I, for one, know of only two.

The Court: Yes, well, this Court excluded the public in the last capital murder trial we had. We did not exclude the press, if I [23] recall.

Mr. Wellford: I stand corrected.

The Court: But the press was present.

All right, hand that up, Mr. Baughan.

Note: Order is now being handed to the Court.

The Court: I've marked the original filed, Mr. Wellford, so that is in—before the Court.

Mr. Wellford: Thank you, Your Honor.

The Court: Mr. Wellford, I have another problem that, uh, the Clerk and I had one time before. We had a motion to, uh, uh, expunge the record, which is allowed under the new statute, and by the time we got through expunging the record, we had created more record than we had when we started.

[24]Now, uh, your motion here today, uh, I—I cannot prohibit you from immediately going upstairs. Now, whether I should prohibit you from discussing it with your clients, Richmond Newspapers, Timothy Wheeler and Kevin McCarty, I have a problem with. Uh, I don't know whether—

can Mr. Norwood or Mr. Bynum advise me, uh, should I stick my foot really far in it and put a gag rule on Mr. Wellford at this point? Now, his clients have petitioned into this suit.

Mr. Norwood: Well, Judge, I don't—

Mr. Bynum: From a practical standpoint, Your Honor, I think, uh, if the newspapers do print something, I anticipate being through tomorrow with this case and the jury—no, they wouldn't necessarily do that because you've got, uh, the Dispatch.

[25] Mr. Norwood: They can read the morning's paper. Uh, Judge, I don't believe that, uh—although I have seen instances where the Court has ordered the attorney not to discuss or relay the information to the client when it would be detrimental to some other's interest to do so, but I'm reluctant to ask the Court to order Mr. Wellford not to discuss this matter—

The Court: Yes, sir.

Mr. Norwood: —with his client, but, uh, I believe it would be infringing on Mr. Wellford's right as attorney and his client.

The Court: Yes, sir, I'm inclined to agree with you.

Mr. Wellford: I think, Your Honor, that if they don't get in, they're going to know—

The Court: Yes.

Mr. Wellford: —the actions of the Court whether I discuss it with them or not. I don't propose [26] to go into that. They knew why I was here, they've seen the motion—

The Court: Right.

Transcript Of September 11, 1978, Hearing In Hanover County Circuit Court On Appellants' Motion To Vacate Order Closing Entire Trial To Public And Press, Including Circuit Court's Unreported Oral Order Denying Appellants' Motion To Vacate Closure Order Of September 11, 1978

Mr. Wellford: —and, uh, I can tell them you denied the motion.

The Court: And if you, uh, uh, need anything from the Court, Mr. Wellford, uh, a stipulation or something in writing or something of that nature, uh, the Court will be glad to cooperate with you.

Mr. Wellford: We have no intentions of running off anywhere tonight or tomorrow. I think that, uh, normally the procedure is in these cases a Writ of Mandamus and I believe the law is if there's a continuing interest that's not mooted by the conclusion of the trial—

The Court: Yes, sir.

Mr. Wellford: —and so I would propose to allow the trial to continue in this and follow normal [27] processes. I hope the Court is not offended.

The Court: No, sir.

Mr. Wellford: We'd like to—

The Court: I'd like to be helped and we'd all like to be helped.

Mr. Wellford: Thank you.

The Court: I thank all of you gentlemen and we'll start again tomorrow morning at ten o'clock with the press and public excluded.

Mr. Norwood: Thank you, sir.

Hearing concluded at 5:20 o'clock P.M.

[Certificate of Court Reporter Omitted In Printing]

Hanover County Circuit Court's Unreported Written Order Denying Appellants' Motion To Vacate Closure Order Of September 11, 1978

VIRGINIA:

IN THE

CIRCUIT COURT OF THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA,

—*v.*—

JOHN PAUL STEVENSON,

Defendant.

ORDER

This day came Richmond Newspapers, Inc., Timothy B. Wheeler, and Kevin McCarthy, by counsel, and filed their motion with the Court seeking vacation of the Court's order closing this trial to the public and the press, and seeking access to the courtroom during said trial.

And having reviewed a memorandum tendered with the motion, and deeming it proper so to do, the Court denies the said motion.

Enter: September 11, 1978 RICHARD H.C. TAYLOR,
Judge

Seen and objected to
ALEXANDER WELLFORD
Of Counsel

Hanover County Circuit Court's Unreported Written Order Striking Commonwealth's Evidence And, The Jury Having Been Excused, Acquitting Defendant Stevenson

VIRGINIA:

IN THE

CIRCUIT COURT FOR THE COUNTY OF HANOVER

September 12, 1978

Case No. 68-A-77

Commonwealth of Virginia
Vs. Upon an Indictment, to-wit: Murder
John Paul Stevenson

This day came the Attorney for the Commonwealth and John Paul Stevenson, who stands indicted for a felony, to-wit: Murder, as charged in the Indictment, appeared according to the condition of his recognizance, and came also C. Willard Norwood, his attorney, and also came the jury.

Whereupon, in the absence of the jury, the defendant by counsel made a Motion that a mis-trial be declared, which motion was taken under advisement.

At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the Court to strike the Commonwealth's evidence on grounds stated to the record, which Motion was sustained by the Court.

And the jury having been excused, the Court doth find the accused NOT GUILTY of Murder, as charged in the Indictment, and he was allowed to depart.

RICHARD H.C. TAYLOR
Judge

Hanover County Circuit Court's Unreported Written Order *Nunc Pro Tunc* Granting Appellants' Written Petition To Intervene *Nunc Pro Tunc*

VIRGINIA:

IN THE

CIRCUIT COURT OF THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA,

—*v.*—

JOHN PAUL STEVENSON,
Defendant.

ORDER

This day came Richmond Newspapers, Inc., Timothy B. Wheeler, and Kevin McCarthy, by counsel, and filed their petition with the Court seeking leave to intervene *nunc pro tunc* September 11, 1978, in the captioned matter, for the purpose of asserting defenses to the Court's order closing the trial of the above captioned matter to the public and the press.

And having reviewed a memorandum tendered with the petition, and deeming it proper to do so, the Court grants the said petition.

Enter: September 27, 1978 RICHARD H.C. TAYLOR,
Judge

We ask for this:

ALEXANDER WELLFORD
Of Counsel

Virginia Supreme Court's Unreported Judgment Refusing Appellants' Petition For Appeal

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 9th day of July, 1979.

Record No. 781598

Richmond Newspapers, Inc., et al.,

Appellants,

against

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Hanover County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case. *Gannett Co., Inc.* v. *DePasquale,* No. 77-1301, 47 U.S.L.W. 4902 (1979).

A Copy,
Teste:
ALLEN L. LUCY, *Clerk*

By:
RICHARD R. BURIAK,
Deputy Clerk

Virginia Supreme Court's Unreported Judgment Dismissing Appellants' Petition For Writ Of Mandamus

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 9th day of July, 1979.

In Re: Richmond Newspapers, Inc., et al., Petitioners
Record No. 781599

Upon a Petition for a Writ of Mandamus

On November 8, 1978, came Richmond Newspapers, Inc., Timothy B. Wheeler and Kevin McCarthy, by counsel, and filed pleadings praying that a writ of mandamus do forthwith issue, to be directed to the Honorable Richard H. C. Taylor, Judge of the Circuit Court of Hanover County, respondent, compelling him to grant the petitioners access to the criminal proceedings in the case of *Commonwealth of Virginia* v. *John Paul Stevenson,* and for other relief.

Also came the respondent, by counsel, and filed pleadings in opposition to the said petition.

And the court having considered the said petition and pleadings in opposition, is of opinion that the writ of mandamus should not issue as prayed for. It is therefore ordered that the said petition be dismissed and that the respondent recover of the petitioners the costs expended

Virginia Supreme Court's Unreported Judgment Dismissing Appellants' Petition For Writ Of Mandamus

herein. *.Gannett Co., Inc.* v. *DePasquale,* No. 77-1301, 47 U.S.L.W. 4902 (1979).

A Copy,
Teste:
ALLEN L. LUCY, *Clerk*

By:
RICHARD R. BURIAK,
Deputy Clerk

Respondent's costs:

Attorney's fee *$50.00*

Teste:

ALLEN L. LUCY, *Clerk*

By: RICHARD R. BURIAK,
Deputy Clerk

Virginia Supreme Court's Unreported Judgment Dismissing Appellants' Petition For Writ Of Prohibition

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 9th day of July, 1979.

In Re: Richmond Newspapers, Inc., et al., Petitioners
Record No. 781600

Upon a Petition for a Writ of Prohibition

On November 8, 1978, came Richmond Newspapers, Inc., Timothy B. Wheeler and Kevin McCarthy, by counsel, and filed pleadings praying that a writ of prohibition do forthwith issue, to be directed to the Honorable Richard H. C. Taylor, Judge of the Circuit Court of Hanover County, respondent, prohibiting him from denying the petitioners access to the criminal proceedings in the case of *Commonwealth of Virginia* v. *John Paul Stevenson,* and for other relief.

Also came the respondent, by counsel, and filed pleadings in opposition to the said petition.

And the court having considered the said petition and pleadings in opposition, is of opinion that the writ of prohibition should not issue as prayed for. It is therefore ordered that the said petition be dismissed and that the respondent recover of the petitioners the costs expended

Virginia Supreme Court's Unreported Judgment Dismissing Appellants' Petition For Writ Of Prohibition

herein. *Gannett Co., Inc.* v. *DePasquale,* No. 77-1301, 47 U.S.L.W. 4902 (1979).

A Copy,
Teste:
ALLEN L. LUCY, *Clerk*

By:
RICHARD R. BURIAK,
Deputy Clerk

Respondent's costs:

Attorney's fee $50.00

Teste:

ALLEN L. LUCY, *Clerk*

By: RICHARD R. BURIAK,
Deputy Clerk

Richmond Times-Dispatch, Fri., March 10, 1978
Page B-1, Col. 1*

KILLINGS DENIED BY ATHEY

By Tim Wheeler
Times-Dispatch Staff Writer

Paul Jerry Athey told a Hanover County Circuit Court jury yesterday that he did not rob, rape and kill 28-year-old Ruby Diane Powell or kill her son, David, 6, in their trailer in northwestern Hanover.

In a quiet, controlled voice that broke only once, the 23-year-old machine operator told the jury that he did not remember confessing to Hanover and Goochland investigators who interviewed him at Medical College of Virginia as he was recovering from an overdose of pills.

Athey faces a possible death sentence if he is convicted of capital murder in Mrs. Powell's death.

The bodies of the mother and her child, who were stabbed and had their throats slashed, were found May 9 by Mrs. Powell's mother-in-law.

Two With Him

Athey said he had gone to the Powell trailer the evening of May 8, when authorities say the woman and child were slain. But Athey testified that an older brother, Linwood, and a cousin named Joe Lewis accompanied him to the trailer and stabbed Mrs. Powell after Jerry Athey had attempted to take a knife from Lewis. The brother and

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*Reprinted from Appendix to Appellants' Petition for Appeal to the Virginia Supreme Court at 48.

Richmond Times-Dispatch, Fri., March 10, 1978
Page B-1, Col. 1

cousin also later told him that after he fled the trailer they had stabbed the boy in the back, Athey testified.

When asked by his lawyer, J. Murray Hooker II, whether he remembered confessing to investigators from the Hanover and Goochland sheriff's departments, Athey said, "I can't recall talking to them."

Of the detailed statements the investigators say they obtained from Athey at the hospital, he said:

"I might have made them. I might not have made them. I don't know. I don't recall making them."

Athey said he had not implicated anyone else then "because I was trying to protect Joe Lewis and my brother. They told me I better not tell [that] they was going to kill me if I told."

Statement Details

Athey said he must have learned from his brother and cousin most of the details contained in the statements investigators say they obtained from him. Linwood Athey and Joe Lewis described what they had done in the trailer as the three drove away, Jerry Athey testified yesterday.

The three had driven to the [page B-8, col. 1] trailer, Athey testified, so he could take another look at an automobile he had discussed buying the day before with Mrs. Powell's husband, David Sr.

But when they arrived, Mrs. Powell told Jerry Athey her husband was gone, he testified.

While Jerry Athey was examining the car, Linwood Athey and Lewis got out of Jerry's car and apparently entered the trailer, Jerry testified, because when he looked for them, the trailer door was open.

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Inside, Athey testified, he found Mrs. Powell lying partially undressed in a bedroom, with Lewis standing with a knife at the head of the bed and with Linwood holding a gun at the foot of the bed.

"Then I asked them why they were in there, and what they were doing," Athey testified. Lewis refused to give Athey the knife he had bought the day before, he said, and cut Athey's thumb when he tried to take it.

"They told me to get the hell out of here," Athey testified.

"I Saw Joe Lewis"

"I saw Joe Lewis stab her once in the chest," Athey testified, then added that he turned and fled the trailer, pulling down a curtain as he did.

Athey also denied that he had been wearing a green leather cap on the day of the slayings, although a Goochland merchant testified Wednesday he had seen Athey wearing it. A green leather cap was later found in Mrs. Powell's bedroom.

Though he acknowledged buying the cap, Athey said his brother Linwood had been wearing it that weekend. Lewis also had a similar cap, Athey testified.

Linwood Athey and Lewis cannot be located now, Athey's defense lawyers say.

Athey also testified that the investigators had told him at least one key detail of the crime while taking his statement.

Shown Photographs

"I didn't know their throats was cut," he said, his voice breaking, when Hooker asked him about it.

Hooker also had Athey look at two black and white photographs taken after the bodies of Mrs. Powell and David

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were found, then asked Athey in succession whether he had killed, robbed, raped or cut the throats of the pair.

Though he barely glanced at the photos, Athey repeatedly said "No, no, no, no sir, no sir. . . ."

Commonwealth's Attorney Patrick R. Bynum Jr., however, is expected to hammer away at Athey's account in cross-examination to begin this morning. Bynum said yesterday that authorities already had looked into whether Athey's brother and cousin could have been involved.

Before Athey took the witness stand yesterday, the defense lawyers paraded five neighbors before the jury to attest to Athey's good reputation.

But to the surprise of Athey's attorneys, one of the character witnesses admitted on the stand that he himself was a convicted murderer who had served time in prison.

Hooker and Athey's other defense lawyer, M. Ralph Page, also complained yesterday after the hearing about the facial expression—which they termed "smirks"—of a sheriff's deputy who was stationed behind Athey while he testified.

Bynum completed the prosecution's case yesterday with testimony from a forensic scientist who identified blood stains and seminal fluid found at the scene as attributable to a person with the same blood type as Athey. Hair samples found at the scene also appeared to come from a black person, the forensic scientist testified. Athey is black, the Powells were white.

The trial is to enter its fifth day today, and Judge Richard H.C. Taylor and the lawyers indicated yesterday that the trial may continue through tomorrow, especially if the jury should convict Athey of capital murder. In that case, a second hearing would have to be held on whether to give the death sentence or life imprisonment.

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The courtroom has been empty except for participants and reporters since the trial began. Athey's relatives and all spectators have been excluded at the defense lawyers' request. Hooker indicated they feared family members might become upset enough to cause a disturbance during the trial.

Richmond News Leader, Wed., May 31, 1978
Page 59, Col. 1*

NEW TRIAL IN HANOVER IS MISTRIAL

A mistrial has been declared in the retrial on murder charges of a Baltimore man because a juror asked to be excused after the trial had begun.

Hanover Circuit Court Judge Richard H.C. Taylor yesterday granted the defense motion for a mistrial for John Paul Stevenson who, along with two others, was accused of murder in the death of Hanover hotel manager Lillian Emma Keller in 1975.

Stevenson and his brother-in-law, Howard Franklin Bittorf, were convicted of the murder in 1976, but the Virginia Supreme Court overturned their convictions while they were serving their prison terms.

A third defendant, Jeffrey A. Taylor of Ashland, was acquitted by a jury in 1976.

Yesterday, a juror asked to be excused because of a nervous condition. After she was dismissed Judge Taylor was unable to call another juror; other members of the jury pool already had been sent home. Judge Taylor declared the mistrial and reset the case for next Tuesday.

Mrs. Keller's stabbed and naked body was found Dec. 2, 1975 at the Holly Court Motel, where she was the live-in manager. A key piece of evidence in Stevenson's original conviction was a bloodstained shirt obtained from Stevenson's wife soon after the killing.

The Virginia Supreme Court, however, ruled that the shirt was entered into evidence improperly.

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*Reprinted from Appendix to Appellants' Petition for Appeal to the Virginia Supreme Court at 46.

Richmond News Leader, Wed., June 7, 1978
Page B-6, Col. 1*

MISTRIAL DECLARED IN SLAYING CASE

For the second time in a week, Hanover Circuit Court Judge Richard H. C. Taylor declared a mistrial in the case of a Baltimore man charged with a murder in Hanover. But this time neither the judge nor defense or prosecution attorneys would say why the mistrial was declared.

In fact, nearly everything about John Paul Stevenson's aborted trial was secret yesterday[.] Judge Taylor kept the courtroom closed while jurors were individually selected.

And after about an hour, when the prospective jurors were sent home and a mistrial was declared on the judge's orders, nobody would say why. "No comment" was the only comment.

Apparently, however, the mistrial declaration involved a prospective juror who had read about Stevenson's trial in a newspaper and had proceeded to tell other prospective jurors about the case before the retrial began yesterday.

Stevenson and Howard Franklin Bittorf are charged with killing Mrs. Lillian M. [*sic*] Keller, the live-in manager of the Holly Court Motel on U.S. 1 in Hanover in 1975. Stevenson and Bittorf were found guilty of second-degree murder in 1976. Stevenson was sentenced to 10 years in prison and Bittorf to 20.

But the Virginia Supreme Court overturned ther [*sic*] convictions last October and ordered new trials for both men. The court ruled the convictions were bassd [*sic*] on evidence improperly introduced during the trial.

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*Reprinted from Appendix to Appellants' Petition for Appeal to the Virginia Supreme Court at 47.

Richmond News Leader, Wed., June 7, 1978
Page B-6, Col. 1

Stevenson originally was to be retried last week, but a mistrial was declared after a jury member was excused because of a nervous condition. Stevenson now is scheduled to be tried Sept. 11 and 12. And Bittorf, whom Commonwealth's Attorney Patrick R. Bynum Jr. wants to try after Stevenson's trial, doesn't have a trial date yet.

Richmond Times-Dispatch, Sat., Aug. 5, 1978
Page B-1, Col. 3

JUDGE CERTIFIES 16 CHARGES AGAINST NORTHAMPTON WORKER

By Bill McKelway
Times-Dispatch State Staff

EASTVILLE—A Northampton County general district court judge yesterday certified 16 charges, including two for rape and one for capital murder, brought against a county laborer after barring the press from a preliminary hearing but permitting the general public to attend.

In an interview following the hearing, Judge George Willis III said he ruled to bar the press from the hearing following a motion to do so by the county commonwealth's attorney and in an effort "to prevent this case from being tried in the newspapers."

"I imagine [the press] will be able to attend the trial if it gets to the circuit court level," Willis said.

Three reporters were excluded from the hearing, but were briefed later by Commonwealth's Attorney Robert Oliver, who said defense lawyers for Morris Odell Mason agreed to support his motion.

Mason, 24, of Nassawadox is charged with the murder of two elderly women, Ursula Stevenson, 86, of Birdsnest on May 2 and Margaret K. Hand, 72, of Nassawadox on May 13.

Both women were found when their homes were burned and broken into. Mrs. Hand had been raped.

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* Reprinted from Appendix to Appellants' Petition for Appeal to the Virginia Supreme Court at 49.

Richmond Times-Dispatch, Sat., Aug. 5, 1978
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Mason, a part-time employee of a chicken processing plant on the Eastern Shore, faces further charges stemming from the rape of a 12-year old girl and the attempted murder of her 13-year-old sister May 14.

Authorities arrested Mason early May 15 after he allegedly burglarized and burned the home of a third woman, living near the Chesapeake section of the county.

Oliver said he presented "six or seven" witnesses at the hearing yesterday, most of them law enforcement personnel. Other sources said most of the testimony during the three-hour hearing centered on transcripts of statements made by Mason to state police and county sheriff's deputies. Defense lawyers, Oliver said, presented no evidence at the hearing but cross-examined prosecution witnesses.

Mason was led to the county courthouse in handcuffs by four county deputies. Prior to the beginning of the hearing, deputies searched spectators and stood guard in the small courtroom.

Willis first ordered the courtroom cleared of all spectators during the testimony of one of the juvenile victims and then barred only the press from the remainder of the proceedings. The three reporters represented The Richmond Times-Dispatch, The Norfolk Virginian-Pilot and The Eastern Shore News of Accomac.

Willis ordered Mason to undergo psychiatric tests at Central State Hospital at Petersburg on May 26. Mason was returned to the county jail July 11 after being judged competent to stand trial.

Mason was paroled from the state penitentiary in April after serving 2½ years of a 10-year sentence for larceny and arson. He remains in custody in the county jail under more than $1 million bond. On Sept. 11 [a] Circuit Court

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Page B-1, Col. 3

grand jury will review the charges certified yesterday against Mason. Oliver refused to comment on whether he would seek the death penalty for Mason. He said the motions to bar the press from yesterday's hearing was based partly on his desire to prevent a change of venue in the case.